IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 33646 of 2005(E)

PETITIONER:

P.MOIDEEN, PROPRIETOR,
AL-AMEEN WOOD INDUSTRIES, KANHANGAD SOUTH,
KANHANGAD P.O., KASARAGOD DISTRICT.

BY ADV. SRI.V.P.SUKUMAR
SRI.KURYAN THOMAS

RESPONDENTS:

1. THE ADDITIONAL SALES TAX OFFICER,
HOSDURG, KASARAGOD DISTRICT.

2. THE SPECIAL DEPUTY TAHSILDAR (RR),
HOSDURG.

3. THE SUPERINTENDENT OF POLICE,
KASARAGOD.

4. THE MANAGER,
SOUTH INDIAN BANK LTD., FEROKE P.O., KOZHIKODE.

5. M/S.HILL WOOD INDUSTRIES,
RAMANATTUKARA, KOZHIKODE.

6. M/S.MANGALYA TIMBERS, MALAPPURAM.

7. M/S.MANJALI INDUSTRIES, PALAKKAD.

8. M/S.HILL WOOD IMPORTS & EXPORTS PVT LTD.
FEROKE, KOZHIKODE.

9. M/S.NATIONAL TIMBER TRADERS,
PILATHARA.

10. P.AHAMMEDKUTTY & COMPANY,
KADAMPUZHA ROAD, PETTA, FEROKE,
KOZHIKODE DISTRICT.

11. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOZHIKODE.

12. THE SALES TAX APPELLATE TRIBUNAL,
ADDITIONAL BENCH, KOZHIKODE.

*13. THE DIRECTOR, VIGILANCE AND ANTI CORRUPTION BUREAU,
TRIVANDRUM.

*14. THE COMMISSIONER OF COMMERCIAL TAXES,
TRIVANDRUM.

(*IMPLEADED AS ADDITIONAL RESPONDENTS 13 & 14 AS PER ORDER DATED 23/12/2005)

BY ADV. SRI.K.PRABHAKARAN, SC,SOUTH INDIAN BANK
ADV. SHRI. MOHAMMED RAFFIQ, GOVERNMENT PLEADER
SRI.K.RAMAKUMAR
SRI.P.J.MATHEW
SRI.THOMAS JOHN AMBOOKEN
SRI.P.N.DAMODARAN NAMBOODIRI
SRI.C.KHALID
SRI.S.MAMMU
SRI.M.K.DAMODARAN (SR.)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No. 33646/2005

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE REVISED ASSESSEMNT ORDER DATED 07/02/2005 PASSED BY THE 1ST RESPONDENT FOR 2001-02.

P2 : COPY OF THE ASSESSMENT ORDER DATED 21/3/2005 FOR THE YEAR 2002-03.

P3 : COPY OF THE PROVISIONAL ASSESSMENT ORDER DATED 17/02/2004 PASSED BY THE 1ST RESPONDENT FOR APRIL 2003 TO JANUARY 2004.

P4 : COPY OF THE COMPLAINT DATED 16/12/2004 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

P5 : COPY OF THE REPRESENTATION DATED 02/12/2004 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.

P6 : COPY OF THE NOTICE DATED 'NIL' RECEIVED BY THE PETITIONER FROM THE SUB INSPECTOR OF POLICE, HOSDURG.

P7 : COPY OF THE COMPLAINT DATED 31/8/2005 FILED BY THE PETITIONER UNDER SEC. 200 OF THE CR.P.C. BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE – I, HOSDURG.

P8 : COPY OF the JUDGMENT DATED 08/08/2005 IN THE W.P.(C)No. 13129 & 19619/2005.

P9 : COPY OF THE APPEAL DATED 10/03/2005 FILED BY THE PETITIONER BEFORE THE 11TH RESPONDENT AGAINST EXT.P1 ASSESSMENT ORDER.

P10 : COPY OF THE APPEAL DATED 22/4/2005 FILED BY THE PETITIONER BEFORE THE 11TH RESPONDENT AGAINST EXT.P2 ASSESSMENT ORDER.

P11 : COPY OF THE APPEAL DATED 24/8/2004 FILED BY THE PETITIONER BEFORE THE 12TH RESPONDENT TRIBUNAL.

P12 : COPY OF THE SALE NOTICE DATED 07/11/2005 ISSUED by the 2ND RESPONDENT.

P13 : COPY OF THE SALE NOTICE DATED ' NIL' ISSUED BY THE 2ND RESPONDENT IN RESPECT OF MOVABLE PROPERTIES OF THE PETITIONER.

P14 : COPY OF THE SALE NOTICE DATED 27/1/2005 ISSUED BY THE 2ND RESPONDENT IN RESPECT OF TATA INDICA CAR OF THE PETITIONER.

P15 : COPY OF THE ATTACHMENT NOTICE DATED 07/03/2005 ISSUED BY THE 2ND RESPONDENT.

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RESPONDENT'S EXHIBITS

R6(a) : COPY OF THE REPORT DATED 12/8/2005 FILED BY THE S.I. OF POLICE.

R6(b) : COPY OF FORM – 18.

R6(c) : COPY OF THE PURCHASE ORDER.

R6(d) : COPY OF THE ORDER NO.IBK/C 164/05-06/CR NO. 61/06-07 DATED 09/11/2006 FOR THE YEAR 2001-02 PASSED BY THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, KOLLAM.

R6(e) : COPY OF THE ORDER NO.IBK/C 164/05-06/CR NO. 62/06-07 DATED 09/11/2006 FOR THE YEAR 2002-03 PASSED BY THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, KOLLAM.

R6(f) : COPY OF THE ORDER NO.IBK/C 164/05-06/CR NO. 63/06-07 DATED 09/11/2006 FOR THE YEAR 2003-04 PASSED BY THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, KOLLAM.

R6(g) : COPY OF THE ORDER NO.IBK/C 164/05-06/CR NO. 64/06-07 DATED 09/11/2006 FOR THE YEAR 2004-05 PASSED BY THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, KOLLAM.

R6(h) : COPY OF THE ORDER NO.IBK/C 12/05-06/CR NO. 65/06-07 DATED 09/11/2006 FOR THE YEAR 2001-02 PASSED BY THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, KOLLAM.

R6(i) : COPY OF THE ORDER NO.IBK/C 2/05-06/CR NO. 66/06-07 DATED 09/11/2006 FOR THE YEAR 2002-03 PASSED BY THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, KOLLAM.

R8(a) : COPY SHOWING THE PAYMENT OF TAX FOR THE YEAR 2001-02 TO 2005-06 INCLUDING GST & AST, CST, DUTY AND IT.

R8(b) : COPY OF THE PURCHASE AGREEMENT BETWEEN THIS DEPONENT AND THE PETITIONER FOR THE YEAR 2001-02.

R8(c) : COPY OF THE PURCHASE AGREEMENT BETWEEN THIS DEPONENT AND THE PETITIONER FOR THE YEAR 2002-03.

R8(d) : COPY OF THE LETTER SENT BY THE PETITIONER.

R8(e) : COPIES OF FORM – 18 DECLARATION.

R8(f) : COPY OF THE REFER REPORT IN CRIME NO. 460/05.

R8(g) : COPY OF THE COMPLAINT DATED 11/7/2005.

R8(h) : COPY OF THE ORDER NO. IBK/C/227/04-05/01-02 CR 110/04-05 DATED 10/11/2006 PASSED BY THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, KOLLAM.

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R8(i) : COPY OF THE ORDER NO. IBK/C/227/04-05/02-03 CR 54/04-05 DATED 10/11/2006 PASSED BY THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, KOLLAM.

R8(j) : COPY OF THE ORDER NO. IBK/C/227/04-05/03-04 CR 55/04-05 DATED 10/11/2006 PASSED BY THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, KOLLAM.

R8(k) : COPY OF THE ORDER NO. IBK/C/157/05-06/01-02 CR 56/06-07 DATED 10/11/2006 PASSED BY THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, KOLLAM.

R8(l) : COPY OF THE ORDER NO. IBK/C/157/05-06/02-03 CR 57/06-07 DATED 10/11/2006 PASSED BY THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, KOLLAM.

R8(m) : COPY OF THE ORDER NO. IBK/C/157/05-06/03-04 CR 58/06-07 DATED 10/11/2006 PASSED BY THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, KOLLAM.

R8(n) : COPY OF THE ORDER NO. IBK/C/148/04-05/01-02 CR 82/06-07 DATED 10/11/2006 PASSED BY THE INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, KOLLAM.

ANNEXURE A1 : COPY OF THE ACCOUNT OPENING FORM NO. 52/200 OF CURRENT ACCOUNT NO.292 WITH THE SIGNATURE OF THE INTRODUCER.

ANNEXURE A2 : COPY OF SOLE PROPRIETORSHIP DECLARATION.

ANNEXURE A3 : COPY OF IDENTITY CARD ISSUED BY ELECTION COMMISSION OF INDIA.

ANNEXURE A4 : COPY OF SPECIMEN SIGNATURE CARD WITH PHOTO OF THE PROPRIETOR M/S. AL-AMEEN WOOD INDUSTRIES OF A/C. NO. 292.

// TRUE COPY //

PA TO JUDGE

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C.N.RAMACHANDRAN NAIR, J.

WP(C) Nos. 33646 of 2005

Dated, this the 6th day of June, 2007

J U D G M E N T

Petitioner is challenging recovery proceedings for recovery of arrears of tax for the years 2001-02, 2002-03 and 2003-04. Petitioner's specific case is that respondents 5 to 10 accounted their unaccounted purchases as made from petitioner by using Form 18 issued in the name of the petitioner without his knowledge. Pursuant to enquiry on these allegations under orders of this Court, petitioner's claim was substantially found to be correct. In the circumstances, WP(C) is disposed of directing recovery authority to withhold recovery proceedings against petitioner until disposal of appeals by the appellate authority to be nominated by the Dy. Commissioner of Commercial Taxes pursuant to direction issued in the connected case. Commissioner is directed to nominate a person immediately and such authority is directed to hear petitioner's request for lifting attachment, pending decision in the appeals. The appellate authority will consider orders issued in connected cases and if petitioner is found to be not involved, the authority will lift the attachment and permit the petitioner to carry on the business.

This WP(C) is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE)

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